if it satisfies the conditions set out in section 113. In particular we mention two conditions: that it should be made to a police officer of or above the rank of Inspector, and that it was made voluntarily. If clearly the statement was made to an officer below the rank of Inspector, then the duty of the committing Magistrate is easy — he simply rejects it. But if the voluntariness of the statement is challenged, and in the unlikely event of the accused's counsel persisting, regardless of expense to his client, in having a trial within a trial, the learned Magistrate's duty is to listen patiently to the evidence of and submission by both sides, and if there is doubt as to the weight and quality of the evidence (as there is in most cases), he should refrain from assessing the evidence and instead simply commit the accused and leave the duty of resolving the doubt to the High Court Judge. We respectfully agree with what Bellamy J. said at page 239 in *Osman bin Abdullah*[2] as follows: —

"When all the evidence has been taken [at a preliminary inquiry], the Magistrate's duty simply is to enquire, has a *prima facie* case been made out against the accused by credible evidence? If the answer to this question is in the affirmative, then the Magistrate is bound to commit the accused for trial. On the other hand, if the answer is in the negative, the Magistrate is bound to discharge the accused, unless the evidence discloses an offence over which he has jurisdiction in which case he may either deal with it himself or order it to be tried by another Magistrate. It is no part of the enquiring Magistrate's duty to consider possible lines of defence to the charge which the accused may raise in the course of the inquiry or to decide whether there are sufficient grounds for convicting the accused. That is the function of the trial court. Adopting the language of Bachelor J. in *In re Bai Parvati*[3] it is a safe rule that where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving the doubt and assessing the evidence should be left to the Court of a Judge."

Accordingly, we set aside the order of the learned judge and restore the order of the learned President admitting the cautioned statement.

Order accordingly.

Solicitors: *Karpal Singh & Co.; R. Rajasingam: Jag-Jit Singh & Subash Chandran.*

TRACTORS MALAYSIA BHD. v. KUMPULAN PEMBINAAN MALAYSIA SDN. BHD.

[F.C. (Raja Azlan Shah, Wan Suleiman and Chang Min Tat F.JJ.) June 1 and October 16, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 177 of 1977]

Hire-Purchase — Failure to pay instalments — Vehicle repossessed by owner — Whether transaction sale or hire-purchase — Claim for damages — Sale of Goods (Malay States) Ordinance, 1957, s. 19 — Hire Purchase Act, 1964, ss. 4 and 15.

Practice and Procedure — Application to strike out statement of claim — Proceedings in lieu of demurrer — R.S.C. 1957, O. 25.

Evidence — Contract reduced to writing — Evidence contradicting, varying, adding to or subtracting from terms — Evidence Act, 1950, s. 92.

This was an appeal from the decision of Abdul Hamid J., reported at [1978] 2 M.L.J. 113. In this case the parties had entered into an agreement relating to a second-hand caterpillar tractor. The agreement was in form a hire-purchase agreement in which the appellant agreed to let and the respondent agreed to hire the motor vehicle subject to the terms and conditions in the agreement and the Hire-Purchase Act, 1967. The respondent paid the deposit but later defaulted in the instalments. The appellant thereupon repossessed the vehicle but subsequently the respondent paid all the arrears and expenses and the hire-purchase agreement was revised. The respondents again fell into arrears and the appellants claimed the balance due on the agreement, damages and costs. The matter was settled and on the respondent paying to the appellant the payments outstanding on the purchase of the vehicle, the appellant transferred the ownership of the vehicle to the respondent. Subsequently the respondent commenced an action for damages against the appellant contending that the purchase of the vehicle was an outright purchase, the property in the vehicle passed immediately on the payment of the deposit, that thereafter the appellant had only a claim for the balance due and no right of re-possession; and therefore the exercise of repossession was wrong giving the respondent a claim for damages. The appellant applied in the High Court to strike out the claim of the respondent as disclosing no cause of action on the pleadings. The application was refused and the appellant appealed to the Federal Court.

Held, allowing the appeal: (1) on a proper and correct construction of the agreement between the parties, it was beyond argument that the intention between them was that the property in the vehicle was not to pass to the respondent until full payment had been made. It was therefore a hire-purchase agreement and until full payment had been made the appellant had the right to repossess the vehicle on breach of its terms by the respondent. The repossession was therefore not wrongful;

(2) the case was therefore on the undisputed facts and as a matter of the proper construction of the agreement and the application of the proper law, an eminently fit one for proceedings in lieu of demurrer under Order 25 Rules of the Supreme Court.

Cases referred to:-

(1) *Dunlop* v. *Selfridge* [1915] A.C. 847.
(2) *Reid* v. *Macbeth and Gray* [1904] A.C. 223.
(3) *Dennant* v. *Skinner* [1948] 2 K.B. 164.
(4) *The Parchim* [1918] A.C. 157.
(5) *Narasingerji Gyanagerji* v. *Ponuganti Parthasaradhi* (1924) 51 I.A. 305.
(6) *Moorgate Mercantile Co. Ltd.* v. *Finch & Anor.* [1962] 2 All E.R. 467.

FEDERAL COURT.

Wong Chong Wah for the appellant.

Jagjit Singh for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The short question in this appeal is whether the agreement entered into between the parties is a hire-purchase agreement as contended by the appellant-defendant or an outright sale on instalment terms as argued by the respondent-plaintiff. If it is a hire-purchase agreement, then by the terms of it the appellant would have been entitled to re-possess the vehicle on breach of any of the terms of the agreement and would not be liable for damages. If an outright sale, the property in the vehicle had passed to the purchaser and the purchaser would have a perfectly valid claim for wrongful re-possession.

In the High Court on an application to strike out the claim of the purchaser for damages for wrongful possession as disclosing no cause of action on the pleadings and having regard to the facts, the learned trial judge refused to do so. He therefore dismissed the application with costs. From that decision this appeal lies.

The vehicle concerned was a second-hand caterpillar tractor priced at $173,500. The price was such

that, as in so many instances, an agreement for purchase by instalments was entered into. This agreement is in the usual form of the appellant. It bore the heading and it was entitled "Hire Purchase Agreement" under the Hire Purchase Act 1967. The rights and obligations of the parties under section 4 of the Act were recited in the agreement. They were the incidents of hire-purchase. By the agreement it was agreed that "the Owner will let and the Hirer will take on hire the motor vehicle more particularly described (hereinafter referred to as the vehicle...) upon and subject to the terms and conditions in this agreement and the Hire Purchase Act 1967 contained."

Accompanying this agreement was an offer, again in the hiror's usual form, whereby the respondent requested the appellant to let on hire "upon the terms and conditions appearing below and also appearing in the Hire Purchase Agreement attached hereto (which I have read and understood) the goods more particularly described below...." This offer was signed by the respondent.

In the events that had happened, the respondent paid an initial deposit of $52,050 but failed to pay the instalments due on July 5, 1975 and subsequent months. The appellant repossessed the vehicle. It was never a contention between the parties that in doing so, the appellant had failed in any way to comply with the provisions of law in the Hire Purchase Act and with the terms of the agreement. The repossession was clearly founded on the claim that in the relationship between the parties, the property between the parties had not passed from the appellant to the respondent.

The respondent being in need of the vehicle for its purpose then paid the appellant, partly by post-dated cheques, all the arrears that had fallen due by reason of which the right of repossession of the vehicle was exercised as well as the expenses incurred by the appellant in the repossession and was given back the vehicle. The hire-purchase agreement was revived. Again the respondent fell into arrears but this time when the appellant sought to repossess the vehicle, it found that the respondent had put it out of reach. The appellant accordingly commenced two actions: the first, Civil Suit No. 2245 of 1976 against the respondent and the guarantor for: (1) $60,000 being arrears of instalment of rent, (2) $2,042.74 being interest thereon up to April 15, 1976, (3) return of the said tractor, (4) damages for wrongful detention, (5) alternatively, damages for conversion, (6) interest, (7) costs of suit and (8) such further or other reliefs; the second, Civil Suit No. 2244 of 1976 against the drawer of the post-dated cheques tendered in purported payment which had been dishonoured on presentation. Nothing, fortunately, turns on any question of election as a settlement was reached under which the respondent paid the appellant the payments outstanding on the purchase of the vehicle, the appellant then transferred the ownership of the vehicle to the respondent and discontinued the two actions.

There is no real dispute as to these facts. There was not even any difference as to the nature and effect of the agreement between the parties, and the matter would have ended in the settlement reached, had the respondent not subsequently been advised that it had a claim against the appellant on the contention that the purchase of the vehicle was an outright purchase, the property in the vehicle passed immediately on the payment of the deposit, thereafter what the appellant had was a claim on the balance due but it had no right of repossession and therefore the exercise of repossession was wrong giving it a claim for damages. The special damages claimed were in respect of the costs of possession and interests paid on the outstanding instalments which the appellant extracted from the respondent on returning the vehicle to it and a sum for loss of income quantified at $1,000 per diem for 53 days from November 2, 1975, the date of the repossession to December 26, 1975, the date of the redelivery to the respondent. It also prayed for general damages.

In dealing with the issue before us, we bear in mind the following:

Where a contract has been reduced to writing,

"it is in the writing that we must look for the whole of the terms made between the parties."

per Viscount Haldane L.C. in *Dunlop* v. *Selfridges*[1] at page 854. And in such a circumstance, section 92 of the Evidence Act 1950 does not enable any party to that agreement to lead evidence contradicting varying adding to or subtracting from its terms.

When the property of the article sold passes from the vendor to the purchaser is laid down in sub-sections (1) and (2) of section 19 of the Sale of Goods (Malay States) Ordinance No. 1 of 1957 which read as follows:

"19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case."

These sub-sections are *in pari materia* with section 17(1) and (2) of the English Sales of Goods Act. See therefore: *Reid* v. *Macbeth & Gray;*[2] *Dennant* v. *Skinner;*[3] *The Parchim.*[4]

So the matter becomes a matter of construction of the agreement in writing between the parties, and the application of the relevant law.

Now the agreement in its relevant parts provides as follows:

"7. The Hirer undertakes that during the duration of this agreement:—

....

(m) Subject to the provisions of Clauses 7(d) and 8 hereof the Owner's consent to the Hirer's possession of the vehicle shall continue until the day prior to any landlord of the Hirer threatening or taking any step to levy a distress for rent upon the vehicle and in the event of such landlord threatening or taking any step to levy a distress for rent the Owner's consent shall be deemed for all purposes to have been withdrawn on such preceeding day notwithstanding that the Owner may not have recovered possession of the vehicle or instituted any steps to recover possession of the vehicle prior to the date on which the distress is levied. If the landlord of the Hirer threatens or takes any step to levy a distress for rent upon the vehicle this agreement shall automatically determine and come to an end.

8. If the Hirer shall make default in payment of any monthly sum payable hereunder for a period of not less than 21 days after service of notice pursuant to section 15(1) of the

Hire Purchase Act 1967 or shall fail to make any other payment required to be made by him to the Owner under the terms of this agreement on the due date for payment thereof as prescribed by this agreement or if the Hirer shall fail to observe or perform any of the other terms and conditions of this agreement or shall suffer or do or omit to be done any act or thing whereby the Owner's rights hereunder shall or may be prejudiced (other than any proceedings by way of distress in which case Clause 7(m) hereof shall apply) then and in any of the said cases and from time to time as often as any of them shall happen it shall be lawful for the Owner subject to any statutory restrictions to the contrary:—

(a) Subject always to the Owner complying with the provisions of section 15 of the Hire Purchase Act 1967 in the case of any breach of the provisions of this Agreement relating to the payment of instalments to terminate the hiring without notice and resume possession of the vehicle and for this purpose to enter upon any premises where the vehicle may be found whereupon the provisions of section 17 of the Hire Purchase Act 1967 shall apply. The Hirer, in so far as it is in his power to do so, hereby irrevocably authorises the Owner or any person appointed in writing by the Owner to enter upon any premises for the purpose of resuming possession of the vehicle PROVIDED ALWAYS that for the purposes of section 24 of the Hire Purchase Act 1967 the licence hereby given shall not be assignable.

OR

(b) By written notice sent by post or otherwise to or left at the Hirer's last known address forthwith to determine and end the hiring and thereupon the Hirer shall no longer be in possession of the vehicle with Owner's consent and the Hirer shall not thereafter have any rights under this Agreement. Upon termination pursuant to this paragraph the Owner shall be entitled to recover on demand from the Hirer:—

(i) All arrears of hire owing up to the date of termination;

(ii) Any sum (other than hire) payable by the Hirer to the Owner under the terms of this agreement;

(iii) All costs and expenses incurred by the Owner (including legal costs as between solicitor and client) in endeavouring to resume possession of the vehicle or in endeavouring to enforce payment under this paragraph (b);

(iv) ...."

In short, these terms provide that the vehicle is not a chattel of the hirer which its landlord can distrain for arrears of rent and if the hirer defaults in the payment of any instalment, or for any other breach of the agreement, the agreement is determinable and upon such determination, the hirer can recover possession of the vehicle as well as claim arrears of rentals and all the costs incurred in the repossession.

On a proper and correct construction of the agreement, it is beyond argument therefore that the intention between the parties was that the property in the vehicle was not to pass to the respondent until full payment had been made and that until this time, the appellant had the right to repossess the vehicle on breach of any of its terms by the respondent. The repossession on November 2, 1975 was therefore not wrongful.

We consider that we can, from the numerous cases the appellant had to bring before the High Court and the Federal Court, take judicial notice of the fact that the *modus operandi* of the appellant is, by reason of the high costs of the vehicles it deals with, by hire-purchase as the only means by which under-capitalised contractors, as most of them are, could acquire the use of them: *Narasingerji Gyanagerji* v. *Ponuganti Parthasaradhi.*[5] We see no reason to believe that the agreement is anything but a hire-purchase agreement and under its terms and under the Hire Purchase Act the hiror has an immediate right to possession on an instalment falling into arrears, *Moorgate Mercantile Co. Ltd.* v. *Finch & Anor.*,[6] subject under the Act to the due observation by the hiror of the various steps it must take before exercising that right.

In our view, therefore, this case is on the undisputed facts and as a matter of proper construction of the agreement and the application of the proper law, an eminently fit one for proceedings in lieu of demurrer under Order 25 Rules of the Supreme Court. The respondent can have no action at law on a hire-purchase agreement for repossession on its default of payment of the rental or in a court of morals (which fortunately this court is not) against the appellant.

The appeal must be allowed with costs here and in the court below. The statement of claim is ordered to be struck out.

Appeal allowed.

Solicitors: *Skrine & Co.; Jagjit Singh & Co.*

WOO YEW CHEE v. YONG YONG HOO

[F.C. (Raja Azlan Shah Ag. C.J. (Malaya), Wan Suleiman and Syed Othman F.JJ.) August 9, 10 and October 16, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 64 of 1978]

Landlord and Tenant — Occupation of premises — Whether license or tenancy — Nature and quality of occupancy — Unregistered sub-lease — Valid as agreement for sub-lease — Whether premises rent controlled — Claim for refund of tea-money — National Land Code, s. 222(4) — Control of Rent Act, 1966, s. 23.

In this case the appellant was the tenant of a shop-house built before 1948. He carried on the family business dealing in textile and cosmetics. On July 27, 1968 he entered into an agreement with the respondent whereby he allowed the respondent to occupy the front left portion and a middle portion of the ground floor for a period of 10 years at a monthly rental of $170. There were differences between the parties and on June 15, 1972 the respondent filed a suit claiming return of $15,000 tea-money alleged to be paid by him to the appellant. The appellant counterclaimed for possession of the premises alleging breaches of the tenancy agreement. The learned trial judge held that the respondent had proved his claim against the appellant and ordered him to return the $15,000. He also found that there was no evidence to support the allegation that the respondent had committed breaches of some of the terms of the agreement and he therefore dismissed both the defence and the counterclaim. The learned trial judge however did not deal with the other matters raised in the defence namely (a) that the agreement was only a sharing arrangement and a licence; (2) that the licence was void owing to non-registration and (3) that the Rent Act did not apply as the premises had become decontrolled when the appellant and his father purchased it in 1962. The appellant appealed.

Held: (1) the learned trial judge was right in dismissing the defence and counterclaim as it was clear on the evidence that it was the appellant who had broken the terms of the agreement;

(2) looking at the indications of the agreement as a whole, a relationship of landlord and tenant was intended between the parties. There was nothing in the evidence to negate and much which supported that there was a tenancy under the Control of Rent Act, 1966;

(3) in this case there was sufficient evidence to show that it was at least more probable than not that the $15,000 tea-money was demanded and received by the appellant and there